ST 01-0257-GIL 12/19/2001 MANUFACTURER'S PURCHASE CREDIT

> A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned (ST-16) or an Annual Report of Manufacturer's Purchase Credit Used (ST-17) with the Department by the last day of the sixth month following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for that calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause. See 86 Ill. Adm. Code 130.331. (This is a GIL).

December 19, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 19, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at http://www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

> I am writing this letter to request a letter ruling on two paragraphs governing the tax regulations for the Annual Report of Manufacturer's Purchase Credit Earned. The Illinois Department of Revenue interpretes that one paragraph in the governing regulations trumps all other paragraphs governing similar/different regulations. AAA believes each paragraph deals with two separate issues, one specifying the legal length of time to use the tax credit earned by a qualified purchaser for that calendar year and the second concerning failure to file properly for a specified calendar year.
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> In order to understand how we arrived at this point, I must explain some of the steps in which lead to the differences of interpretation. AAA experienced some employee turnover in June 2001 resulting in a separation between the accountant responsible for filing the Manufactures Purchase Credit forms and AAA. As a result of this turnover, forms ST-16 and ST-17 were delayed in filing and missed the June 31st 2001 cut off date. AAA believes the unexpected employee turnover should of meet the criteria of reasonable cause for the delayed filing of the forms on a timely bases. However, The Sales Tax Processing Division did not feel this was compelling evidence to accept the delayed filing and denied AAA all credit earned for the year 2000. AAA does not agree with the decision on the 2000 tax credit earned, but excepts it never the less.
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> AAA then requested help from the Illinois Department of Revenue on how to correct 2000's Sales & Use Tax filings. The Illinois Department of Revenue representative said AAA did not have to re-file 2000's Sales and Use Tax due to unused tax credit earned in the year 1999. The representative quoted the Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.331-B-6-5 which stated, 'The credit expires December 31st of the second calendar year following the calendar year in which the credit was earned.' AAA accepted the resolution and requested a written statement specifying this resolution. A couple of days later, AAA received an e-mail denying AAA it's unused 1999 credit earned. When I called the original representative, he said that

his supervisor over ruled his decision and denied AAA the use of it's previously earned credit. When I spoke to the supervisor, she quoted the Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.331-E-6 which stated, 'A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned or an Annual Report of Manufacturer's Purchase Credit Used with the Department by the last day of the sixth month following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for <u>that</u> calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause.' I asked the supervisor to specify how this effects 1999 credit earned. She said by failing to file on time, AAA forfeits all credit earned or used for that calendar year. AAA agrees we do not qualify for the <u>that</u> years purchase tax credit earned and must not use any of the year 2000 credit earned. However, AAA does agree that we forfeit any of the tax credit earned in the previous year of 1999 which AAA qualified all criteria and was in good standing. The Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.331-B-6-5 which states, 'The credit expires December 31^{st} of the second calendar year following the calendar year in which the credit was earned.' This line specifies credit earned will not expire until the second calendar year following the calendar year in which it was earned by a purchaser that files properly.

The Illinois Department of Revenue believes these paragraphs are conflicting paragraphs, and the one paragraph favoring the State of Illinois over rules the other paragraph favoring the taxpayer. AAA believes these paragraphs are not conflicting, but deal with two separate issues. The first issue being the legal length of time a tax payer can use the manufacturers tax credit earned in good standing and the second issue governing the failure of properly filing Annual Tax Reports for <u>A</u> calendar year and the result on <u>THAT</u> calendar years tax credit earned. I believe the Department of Revenue is confusing the time frames or the nature of the time frames in which these regulations were intended.

Please advise AAA in writing on the legal interpretation of the regulations governing the Manufacture's Purchase Credit.

DEPARTMENT'S RESPONSE:

Without the name of who you talked to in the Department, we are unable to determine who made the decisions referenced in your letter or upon what information these decisions were made. However, I believe that I can clear up some of the confusion regarding the issues raised in your letter. As noted on the notice of the denial of reasonable cause, you may protest the denial of reasonable cause to the Department's Hearings Division if you feel that this decision was in error.

Please find enclosed a copy of 86 Ill. Adm. Code 130.331 governing the Manufacturer's Purchase Credit (MPC). The State of Illinois provides a manufacturer's purchase credit in addition to the exemption for manufacturing machinery and equipment. Purchasers of manufacturing machinery and equipment that qualifies for the manufacturing machinery and equipment exemption earn a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. See 35 ILCS 105/3-85 and 35 ILCS 110/3-70. Accumulated MPC credit may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. See Section 130.331(b).

In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or exempt graphic arts machinery and equipment, the manufacturer or graphic arts producer must report credit earned to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Earned (ST-16) for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is earned. See Section 130.331(e)(1). A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned (ST-16) or an Annual Report of Manufacturer's Purchase Credit Used (ST-17) with the Department by the last day of the sixth month following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for that calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause. See Section 130.331(e)(6).

These provisions are the basis for the denial of any MPC earned or used in 2000 because of the failure to file the ST-16 and ST-17 for 2000 by the required due date. In other words, the failure to file an ST-16 for 2000 by the due date without reasonable cause, means that any MPC earned in 2000 is forfeited. Additionally, the failure to file an ST-17 for 2000 by the due date without reasonable cause means that any MPC used for calendar year 2000 is forfeited. The taxpayer cannot use any MPC to satisfy liabilities incurred in 2000 from the purchase of production related tangible personal property.

As for any MPC earned in 1999, any MPC that was properly earned in 1999 will not expire until December 31, 2001. However, because of the failure to file the ST-17 for 2000 by the due date, MPC (even MPC that may have properly been earned and reported as earned in 1999) cannot be used to satisfy liabilities on production related tangible personal property incurred in 2000.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.